

PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference		FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/EP2004/012191		International filing date (<i>day/month/year</i>) 27.10.2004	Priority date (<i>day/month/year</i>) 14.11.2003
International Patent Classification (IPC) or national classification and IPC A23G9/20, A23G9/02			
Applicant UNILEVER PLC			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <ul style="list-style-type: none"> a. <input type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of sheets, as follows: <ul style="list-style-type: none"> <input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)), containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions). 			
<p>4. This report contains indications relating to the following items:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Box No. I Basis of the opinion <input type="checkbox"/> Box No. II Priority <input checked="" type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input type="checkbox"/> Box No. VIII Certain observations on the international application 			
Date of submission of the demand 30.05.2005		Date of completion of this report 05.12.2005	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer Popa, M Telephone No. +49 89 2399-7829	



**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2004/012191

Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
 - This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
 - international search (under Rules 12.3 and 23.1(b))
 - publication of the international application (under Rule 12.4)
 - international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the elements* of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

Description, Pages

1-18 as originally filed

Claims, Numbers

1-24 as originally filed

Drawings, Sheets

1/2-2/2 as originally filed

- a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

- The amendments have resulted in the cancellation of:
 - the description, pages
 - the claims, Nos.
 - the drawings, sheets/figs
 - the sequence listing (*specify*):
 - any table(s) related to sequence listing (*specify*):
- This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
 - the description, pages
 - the claims, Nos.
 - the drawings, sheets/figs
 - the sequence listing (*specify*):
 - any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT
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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

the entire international application,
 claims Nos. 1 (part.), 4 (part.), 5 (part.)

because:

the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):
 the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (specify):
 the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
 no international search report has been established for the said claims Nos. 1 (part.), 4 (part.), 5 (part.)
 the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

has not been furnished
 does not comply with the standard

the computer readable form

has not been furnished
 does not comply with the standard

the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.

See separate sheet for further details

**INTERNATIONAL PRELIMINARY REPORT
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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes:	Claims	-
	No:	Claims	1-24
Inventive step (IS)	Yes:	Claims	-
	No:	Claims	1-24
Industrial applicability (IA)	Yes:	Claims	1-24
	No:	Claims	-

2. Citations and explanations (Rule 70.7):

see separate sheet

**INTERNATIONAL PRELIMINARY
REPORT ON PATENTABILITY
(SEPARATE SHEET)**

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Re Item III.

The independent claim 1 and the dependent claims 4 and 5 make reference to an unknown in the art parameter, namely ...*having an extensibility of at least 30% at -18°C.* which brings unclarity concerning the scope of the claims (Art. 6 PCT) and/or the possibility to be carried out by the skilled person (Art. 5 PCT). As indicated in the description (pages 8-11) and examples, there are other ways to describe the product without involving unusual parameters. PCT Guidelines 5.36 refers to the possibility of defining the invention by using parameters **only when** it cannot be defined in other ways, which is not the case here.

Additionally, it is readily apparent from the examples that only a specific combination of ingredients may solve the extensibility desideratum. The scope of the independent claims is thus broader than the original disclosure allows (PCT Guidelines 5.35).

As the examiner may not (Rule 66.8(a) PCT) carry out even minor modifications to the application, he interpreted said claims without this feature solely for facilitating their examination and not as an amendment.

Re Item V.

1 The following documents are referred to in this communication:

- D1: US 2003/134024 A1 (UNDERDOWN JEFFREY ET AL) 17 July 2003
- D2: GB 2 357 954 A (UNILEVER PLC) 11 July 2001
- D3: US 3 949 102 A (HELLYER JAMES ALLEN ET AL) 6 April 1976
- D4: EP 0 147 483 A (PILLSBURY CO) 10 July 1985
- D5: US 4 434 186 A (BROUWER PETER ET AL) 28 February 1984
- D6: US 4 452 824 A (MCGUIRE MICHAEL T ET AL) 5 June 1984
- D7: US 2003/003215 A1 (HARCOURT ERIC DAVID ET AL) 2 January 2003

2 INDEPENDENT CLAIMS 1 and 15

2.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1 and 15 is not new in the sense of Article 33(2) PCT.

**INTERNATIONAL PRELIMINARY
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(SEPARATE SHEET)**

International application No.
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Document **D1** discloses (the references in parentheses applying to this document) a frozen aerated confection containing 25-37% of a freezing point depressant having the average molecular weight less than 300 ([0017]-[0029] and examples). Proteins are also indicated, both in [0027] and examples.

On the other hand, **D2** additionally discloses in the examples the same composition but employs guar gum in an effective amount.

3 DEPENDENT CLAIMS 2-14, 16-24

Dependent claims do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step (Article 33(2) and (3) PCT).

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